

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 11, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)

Members Excused: Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB64, 1/11/1999; SB 72,
1/11/1999; SB 48, 1/11/1999
Executive Action: None

HEARING ON SB 64

Sponsor: SENATOR ARNIE MOHL, SD 39, KALISPELL

Proponents: Don Vidrine, Montana Department of Environmental
Quality

Opponents: Janet Ellis, Montana Audubon Society

Opening Statement By Sponsor:

SENATOR ARNIE MOHL, SD 39, KALISPELL presented SB 64 on behalf of the Department of Environmental Quality for the purpose of trying to eliminate additional work. Currently, whenever a hot plant is moved that has already received MEPA approval and is already permitted, it is necessary to make another complete EIS on that piece of equipment. The equipment is moved quite often and it is placing an unnecessary workload on staff and causing delays. The purpose of the bill is to eliminate having to do location transfer review once the equipment has already been permitted.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 1.3; Comments : None.}

Proponent Testimony:

Don Vidrine, Chief of the Air & Waste Management Bureau for the Montana Department of Environmental Quality, spoke in support of SB 64 according to his written testimony as per **EXHIBIT (nas07a01)**.

Opponent Testimony:

Janet Ellis, Montana Audubon, spoke in opposition to SB 64 according to his written testimony as per **EXHIBIT (nas07a02)**.

{Tape : 1; Side : A; Approx. Time Counter : 1.3 - 10.8; Comments : None.}

Questions from Committee Members and Responses:

SENATOR KEATING questioned if open gravel pits have an Environmental Assessment or EIS done at the time they are opened. **SEN. MOHL** responded when a gravel permit is requested, a complete EIS is done in that location. The permit requires such information as what kind of equipment will be used, approximate time the equipment will be used and location of the equipment in the pit. **SEN. KEATING** responded then the permittee is already regulated, has already gone through the EIS and the equipment being moved from one location to another does not seriously affect those standards which has been reported in the first permitting statement. **SEN. MOHL** stated that was correct.

SENATOR KEATING asked if we were to follow the recommendation and not allow this exemption from 75-2-211 then moving the plant from

one mine to another would require going through the EA requirement under the MEPA language. **Janet Ellis** responded that is true now but there is an option where the Department can go through rulemaking and get that action categorically excluded. **SEN. KEATING** said that would be a challengeable action and the action could be held up for a number of days or a period of time under the language of MEPA if it is not specifically exempt.

SENATOR KEATING questioned if there was a difference between construction fees and operating permit fees. **Don Vidrine**, responded yes. The operating fees are a maintenance fee for a permit whereas the construction fees are application fees or an initial fee based upon the application of the air quality permit. A fee is assessed whenever an application is submitted for an air quality permit. If certain criteria are met, the permit holder is required to pay a maintenance fee. **SEN. KEATING** questioned if there was more than one Bureau funded out of this account. **Don Vidrine** said yes, there are activities funded in our planning division and our monitoring division. Most of those, however, have to be related with the operation of air quality sources. **SEN. KEATING** stated he was concerned if someone is paying a permit fee for air quality that would be merged into this construction fee account but a party paying air quality fees would never pay a construction fee. **Don Vidrine** responded they struggle with this, but they have a Clean Air Advisory Committee that helps establish many of the fees over time. It is a fact that the amount of application fees collected are not commensurate with the total allocation of resources that it takes to process the permit applications. **SEN. KEATING** stated he would like to receive a list of those who pay construction fees and those who pay permit fees to compare.

SENATOR GROSFIELD stated Section 1 talks about portable emission source. Is there anything here besides activities relative to gravel pits and hot plants that is a portable emission source? **Don Vidrine** responded that pretty much covers everything. **SEN. GROSFIELD** questioned if this bill were to pass, would the Department perform that permit function, deciding how much can be emitted, without the MEPA review. **Don Vidrine** responded yes. It is important to understand this bill only has to do with location transfers and has nothing to do with initial applications. When someone submits an application, a complete review of the application is done, the terms and conditions of the permit are described and a MEPA review is conducted - that will not change. The only thing this bill changes is when the source moves from one place to the other, the MEPA review is exempt. This does not in any way take away from our ability to do additional Environmental review associated with the Clean Air Act and put in

additional terms and conditions to meet local conditions for the site they are transferring to.

SEN. GROSFIELD wondered if different locations might be more sensitive such as locating next to a subdivision versus out in the country. There would have to be some difference in the math of emissions you might offer. How do you arrive at that amount as the equipment transfers? He also assumed there was a wide variety in the kinds of crushers one could get. If someone applies to take a huge one next to a subdivision then you would be looking at something different than if they are out in the country. **Don Vidrine** stated in the approval or disapproval process, the rules provide opportunity to make those site specific determinations. The things that really catch our eye are those that may locate near a non-attainment area, an area in which the national air standards have already been demonstrated to have been affected or degraded. **SEN. GROSFIELD** said we have been talking about the mobile nature of these and that they move around quite a bit. Is it not true that some of them don't move so often? There are some gravel pits along the Interstate that have been there many, many years, so I am assuming that some do not move very often. **Don Vidrine** answered that a portable source cannot be at a particular site for more than one year. We are not talking about any effect on stationary sources that have a permanent location.

SENATOR COCCHIARELLA questioned if the Department considered the categorical exclusion and if so, what was the discussion surrounding that. **Jan Sensibaugh, DEQ**, replied they met with **Todd Everts, EQC**, and went through all their alternatives and came up with the rules that guide what is a categorical exclusion and how a programmatic exemption would be done. This appeared to be the only viable alternative since there are so many variables in where these facilities go and the types of facilities. Some go to gravel pits and have already been looked at, some just go into a farmers field. We could not cover everything we needed to cover in a categorical exclusion or the programmatic.

SEN. COCCHIARELLA questioned if they were only permitting the equipment in a portable. **Jan Sensibaugh**, replied when the initial permit is reviewed, the whole EA is done on the equipment and the initial site where that equipment is located. They would not be excluding that, they are only excluding the additional sites it moves to throughout the life of the equipment. Often times the second site has already undergone the MEPA review for the existing gravel pit where the equipment is being transferred. A new site, if it falls under the gravel pit requirements, would have to go under MEPA review for the gravel pit site, not for the

equipment going into the pit. The gravel pit EA looks at the potential equipment that would go in the pit and simply refers to it as a gravel crusher or asphalt plant.

CHAIRMAN CHRISMORE asked Ms. Sensibaugh to please review with Todd Everts before the Committee takes executive action on this bill.

SENATOR GROSFIELD questioned if part of the reason for this bill was due to a gravel pit in Northwestern Montana where the issue got messy due to a lot of local excitement about the gravel pit. If we pass this bill as is, it would remove the requirement for some kind of local public informational meeting which he thought was in the rules. **Mark Simonich, Director of DEQ**, replied that removing the requirement for some type of informational meeting or public hearing was certainly not the impetus behind this bill. They are not trying to take away any requirement to have the Department provide information to the public and collect input, but they are going to look at a situation where MEPA, as it is put in place, looks at these types of operations that are truly temporary and mobile and move from place to place. MEPA does not really do justice to looking at what the potential impacts may be.

{Tape : 1; Side : A; Approx. Time Counter : 10.8 - 35.8; Comments : None.}

Closing by Sponsor:

SENATOR MOHL closed by thanking the committee for a good hearing. This is not intended to help individuals that own the equipment. They still have to apply for permits and still have to give notification that they will transfer. When the equipment is purchased there is a limited amount of time to get all the permits in place and go through the air quality. MEPA has already been done so why do it again. That is why this bill is so important to not have to go through the same scenario all over again. He encouraged a DO PASS recommendation on this bill.

{Tape : 1; Side : A; Approx. Time Counter : 35.8 - 45; Comments : None.}

HEARING ON SB 72

Sponsor: SENATOR BOB KEENAN, SD 38, BIGFORK

Proponents:

Jan Sensibaugh, Department of Environmental Quality
Steve Pilcher, City of Big Timber
Don Allen, Western Environmental Trade Association
Frank Crowley, ASARCO, Inc.
Cary Hegreberg, Montana Wood Products Association

Opponents:

Jeff Barber, Montana Environmental Information Center
Aaron Browning, Northern Plains Resource Council
Vivan Drake, Lewis & Clark County Water Quality Protection Dist.
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

SENATOR KEENAN opened to say this was an agency bill and he stood before the Committee on the recommendation of his local water treatment plant operator.

Proponent Testimony:

Jan Sensibaugh, Department of Environmental Quality, spoke in support of SB 72 as per her written testimony. **EXHIBIT (nas07a03)**

Steve Pilcher, City of Billings, expressed support for SB 72 with one exception. The bill does provide some positive clarification in a number of areas - the updating of the definition of public water supply system as it relates to operator certification laws is appropriate as is the recognition of availability of federal funds to help offset operator certification fees. The City even supports somewhat cautiously the increase in administrative penalties. The portion that causes us concern is Section 11 which proposes to repeal existing sections of both Montana Public Water Supply Law and the Montana Water Quality Act. In 1994, DHES went through a pretty tough audit of their water quality programs. The EQC was very involved in working with the Department in making some recommendations to address the shortcomings and the specific language that is proposed to be deleted in 75-5-617 and 75-6-110 was included at the request of the Department in response to outed exceptions. I think we should take a very serious look before deleting those important provisions. I ask that you support the bill with recognition of request to delete those two provisions from Section 11.

Don Allen, Western Environmental Trade Association, spoke in favor of SB 72 and concurred with the comments of Steve Pilcher

about 75-5-617 and 75-6-110. We have some concerns about repealing those sections, under the new Section 11.

Frank Crowley, 807 2nd Street, Helena, MT - ASARCO, Inc., spoke in support of SB 72. He had no objection to the bill as written except Section 11 which would be a repealer of the current section 75-5-617. This repealer should be contingent if it is to be in the bill at all. He suggested this was a very balanced section as a result of the study, and it deserves all the Department's remedies. He suggested the committee carefully consider whether that is an appropriate section in an otherwise appropriate bill.

Cary Hegreberg, Montana Wood Products Association, spoke in support of SB 72. In reference to Section 10, which we support, from the standpoint of forestry operations, this is a housekeeping amendment. When this statute was placed into law, logging camps were regularly placed along streams and rivers across Montana and quite often those streams provided municipal drinking water supplies. Roads were built next to streams because it was the only way they could access these areas. Today we are governed by the Streamside Management Zone Law and we apply Forestry Best Management Practices. We show forestry operations are protecting water quality adequately. From the standpoint of forestry, this was simply a redundant section of law and we urge your support.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 10.7; Comments : Side B}

Opponent Testimony:

Jeff Barber, Montana Environmental Information Center, spoke in opposition of SB 72. Our opposition stems primarily from Section 11 which repeals portions of existing laws already referenced. Of particular concern is 75-5-617 and 75-6-110. The Department wants to repeal these because they feel the language is too restrictive and they could not disagree more with that assessment. The most important component of the existing law is that it requires the Department to act when it becomes aware of a violation. By repealing those two provisions the mandate for the Department to act will vanish and the Department will be allowed the discretion whether or not it will respond to water quality violations and what that response will be. They believe Montana's water quality is too valuable to be left to the discretionary authority of the Department. The important thing it does is mandate some form of action. Because of LC989, the Uniform Environmental Enforcement Act is also proposing to repeal these same two sections of the law. They think that would be a

more appropriate form for this type of debate and would like to take it up again there. There are pieces of this bill they do agree with but because of the repealer provision in Section 11, they cannot support it. He asked the committee to amend out the repeal of 75-5-617 and 75-6-110 and, if that does not happen, to table this bill.

Aaron Browning, Northern Plains Resource Council spoke in opposition to SB 72. He agreed with Mr. Pilcher and Mr. Barber with respect to Section 11. The appropriate forum for discussing the wide range of enforcement requirements and responsibilities to the Department is the Uniform Enforcement Bill and that they should have the opportunity and the Senate should have the opportunity to deliberate the merits of amending or repealing those sections while looking at all the cards on the table.

Vivian Drake, Lewis and Clark County Water Quality Protection District, spoke in opposition to SB 72. Although SB 72 does have some positive changes, until rules are in place under the source water protection program she urged the Committee not to eliminate Section 11 of the code.

Janet Ellis, Montana Audubon, would like to see the bill amended as per written testimony **EXHIBIT (nas07a04)**.

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned in 110, the Department "finds" a person is in violation of this part... What goes into "finding" one way or another?

Mark Simonich, DEQ, said a variety of things could go into finding there is a violation: (1) a situation where the Department has verified a violation in the form of a complaint. (2) in investigating the complaint and making sure it is valid. (3) reports that are required to be filed with the Department, either when the report is received, or simply in not receiving the required report. There are many ways to reach that conclusion but in any case it involved the Department specifically verifying there was a situation of non-compliance.

Closing by Sponsor:

SEN. KEENAN closed by saying he wanted full credit for saving the committee about an hour of time by not referring to this bill as a housekeeping bill. With that he closed.

{Tape : 1; Side : B; Approx. Time Counter : 10.7 - 17.3; Comments : None.}

HEARING ON SB 48

Sponsor: SENATOR CHARLES "CHUCK" SWYSGOOD, SD 17, DILLON

Proponents:

Bud Clinch, Director, DNRC

Patrick Heffernan, Montana Logging Association

Cary Hegreberg, Montana Wood Products Association

Opponents: None.

Opening by Sponsor:

SENATOR CHARLES "CHUCK" SWYSGOOD, SD 17, Dillon, presented SB 48. He stated the Department had a program relative to this piece of legislation and turned it over to the proponents. He also handed out amendments needed to clarify the bill as per **EXHIBIT (nas07a05)**.

{Tape : 1; Side : B; Approx. Time Counter : 20.2 - 21.2; Comments : None.}

Proponent Testimony:

Bud Clinch, DNRC, spoke in support of SB 48. He said the bill is a simple bill. The purpose is to implement the simple business practice of paying the bills before we deposit our revenue into our savings account. The reason the Department would like to pursue that is for a number of reasons as per the following **EXHIBIT (nas07a06)**, **EXHIBIT (nas07a07)**, **EXHIBIT (nas07a08)**, **EXHIBIT (nas07a09)**, **EXHIBIT (nas07a10)**, **EXHIBIT (nas07a11)**

Patrick Heffernan, Montana Loggers Association spoke in support of SB 48 for three reasons: 1) promotes good fiscal stewardship as well as good environmental stewardship, 2) support the business like concept and 3) likes funding expenses from revenue which will promote proper and good management of state trust lands.

Cary Hegreberg, Montana Wood Products Association spoke in support of SB 48 and commended **Mr. Clinch** on the excellent job of laying out the issues and legalities surrounding it. He referred to the stories in the newspapers regarding the below cost timber program of the U.S. Forest Service. He feels this bill goes a

long way toward preventing that kind of situation occurring in the management of our state lands by putting the incentive within the Department staff to generate revenues that will provide their own salaries and operational expenses. This is prudent business management and he urged the Committee's support.

{Tape : 2; Side : A; Approx. Time Counter : 24.7; Comments: None}

Opponent Testimony: None.

Questions from Committee Members and Responses:

SENATOR COLE questioned where is the minus to the General Fund, who receives less dollars? **Mr. Clinch** responded, in reference to the flow chart, they are proposing to put this administration account in just prior to the revenues in Box 4 in route to the Permanent Fund. It will slow the growth of the permanent fund. The money used to offset the expenditures within the Department from the current General Fund would just be reverted to the General Fund. In the fiscal note it is referenced that amount is about \$220,000 a year in lost interest. It is a plus fiscal impact of about \$3.5 million minus \$220,000 of interest income so is still a plus \$3,225,000.

SENATOR KEATING stated all of the court decision and precedent presented here today stems from the old Constitution and the new Constitution was about 1972. He wondered if there is an essential difference between the old Constitution and the new Constitution and does this precedent apply to the language of the new Constitution? **Tommy Butler, DNRC Trust Lands Attorney,** answered by saying there is no difference between the old provisions in the 1889 Constitution and the 1972 Constitution. The 1972 Constitutional Convention agreed with the Attorney's General interpretation of the law thereby agreeing that deducting Trust Administration costs from those permanent funds was allowed by law.

SENATOR MAHLUM commended **Mr. Clinch** on the fiscally responsible manner in which he was running the Department.

{Tape : 2; Side : A; Approx. Time Counter : 24.7 - 30.2; Comments : None.}

Closing by Sponsor:

SEN. SWYSGOOD closed by saying he feels anything is Constitutional until it is challenged and he does not see one beneficiary from this Trust Account protesting this bill. The premise is sound, he thinks we need to start looking at this type

of thing in order to take some strain off the General Fund obligations in the State. He agreed it does slow down the growth of the permanent trust, but if they use this money and manage the lands to be more productive and generate more revenue, it could offset that slowdown. He recommended a DO PASS on SB 48.

{Tape : 2; Side : A; Approx. Time Counter : 30.2 - 31.8; Comments : None.}

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas07aad)